



February 22, 2008

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## ENGROSSED SENATE BILL No. 43

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DIGEST OF SB 43 (Updated February 20, 2008 12:19 pm - DI 69)

**Citations Affected:** IC 8-1.5; IC 13-14; IC 36-9.

**Synopsis:** Environmental matters. Requires, with respect to environmental rules subject to automatic expiration, the department of environmental management (IDEM) or the appropriate rulemaking board to publish a notice identifying which of the rules will be readopted. Requires IDEM or the board, on request of a person, to consider readoption of an environmental rule that IDEM or the board proposes to allow to expire. Establishes procedures to prevent a county department of storm water management and a municipal works board from imposing fees in the same area for storm water management.

**Effective:** Upon passage.

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### Gard, Riegsecker

(HOUSE SPONSORS — DVORAK, WOLKINS)

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January 8, 2008, read first time and referred to Committee on Energy and Environmental Affairs.

January 16, 2008, amended, reported favorably — Do Pass.

January 24, 2008, read second time, amended, ordered engrossed.

January 25, 2008, engrossed.

January 28, 2008, read third time, passed. Yeas 46, nays 1.

#### HOUSE ACTION

January 30, 2008, read first time and referred to Committee on Environmental Affairs.

February 21, 2008, amended, reported — Do Pass.

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ES 43—LS 6265/DI 52+



February 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 43

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 8-1.5-5-7 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The  
3 acquisition, construction, installation, operation, and maintenance of  
4 facilities and land for storm water systems may be financed through:  
5 (1) proceeds of special taxing district bonds of the storm water  
6 district;  
7 (2) the assumption of liability incurred to construct the storm  
8 water system being acquired;  
9 (3) service rates;  
10 (4) revenue bonds; or  
11 (5) any other available funds.  
12 (b) **Except as provided in IC 36-9-23-37**, the board, after holding  
13 a public hearing with notice given under IC 5-3-1 and obtaining the  
14 approval of the fiscal body of the unit served by the department, may  
15 assess and collect user fees from all of the property of the storm water  
16 district for the operation and maintenance of the storm water system.  
17 The amount of the user fees must be the minimum amount necessary

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for the operation and maintenance of the storm water system. The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) The board shall use one (1) or more of the following factors to establish the fees authorized by this section:

- (1) A flat charge for each lot, parcel of property, or building.
- (2) The amount of impervious surface on the property.
- (3) The number and size of storm water outlets on the property.
- (4) The amount, strength, or character of storm water discharged.
- (5) The existence of improvements on the property that address storm water quality and quantity issues.
- (6) The degree to which storm water discharged from the property affects water quality in the storm water district.
- (7) Any other factors the board considers necessary.

(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:

- (1) variations in the costs, including capital expenditures, of furnishing services to various classes of users or to various locations;
- (2) variations in the number of users in various locations; and
- (3) whether the property is used primarily for residential, commercial, or agricultural purposes.

SECTION 2. IC 13-14-9.5-4, AS AMENDED BY P.L.123-2006, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (b), **with respect to the rules subject to expiration under this chapter**, the department or a board that has rulemaking authority under this title:

- (1) may readopt ~~all one (1) or more of the rules subject to expiration under this chapter~~ under one (1) rule that lists all rules that are readopted by their titles and subtitles only; **and**
- (2) **shall publish a notice in the Indiana Register identifying:**
  - (A) **the rules, if any, that will be readopted; and**
  - (B) **the rules, if any, that will not be readopted.**

A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If a person submits to the department or a board that has rulemaking authority under this title a written request ~~and~~ **stating a**

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basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must:

- (1) ~~readopt~~ **consider readoption of** that rule separately from the readoption rule described in subsection (a); and
- (2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

(c) If the department or board does not receive a written request under subsection (b) regarding a rule within the first comment period, the agency may:

- (1) submit the **readoption** rule for filing with the publisher under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule; or
- (2) **for one (1) or more of the rules proposed to be readopted as part of the readoption rule described in subsection (a),** elect the procedure for readoption under IC 13-14-9.

**(d) If a person submits to the department or a board that has rulemaking authority under this title a written request stating a basis for the request during the first comment period that a particular rule that the department or board does not intend to readopt as part of the readoption rule described in subsection (a) be readopted, the department or board must:**

- (1) consider readoption of that rule separately from the readoption rule described in subsection (a); and**
- (2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.**

SECTION 3. IC 36-9-23-5, AS AMENDED BY P.L.1-2007, SECTION 247, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. As used in sections 6 through 36 37 of this chapter, "board" means:

- (1) the municipal works board; or
- (2) if the municipality has transferred the powers and duties of the works board under section 3 of this chapter, the:
  - (A) sanitary board; or
  - (B) utility service board;
 to which those powers have been transferred.

SECTION 4. IC 36-9-23-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. (a) **Subject to section 37 of this chapter,** the municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the

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sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;
- (2) provide the sinking fund required by section 21 of this chapter;
- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) The fees are payable by the owner of each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or
- (2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in a

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1 sanitary manner, including equipment and wages.

2 (9) The amount of money sufficient to compensate the  
3 municipality for the property taxes that would be paid on the  
4 sewage works if the sewage works were privately owned.

5 (10) Any other factors the legislative body considers necessary.  
6 Fees collected under subdivision (8) may be spent for that purpose only  
7 after compliance with all provisions of the ordinance authorizing the  
8 issuance of the revenue bonds for the sewage works. The board may  
9 transfer fees collected in lieu of taxes under subdivision (9) to the  
10 general fund of the municipality.

11 (e) The municipal legislative body may exercise reasonable  
12 discretion in adopting different schedules of fees, or making  
13 classifications in schedules of fees, based on variations in:

14 (1) the costs, including capital expenditures, of furnishing  
15 services to various classes of users or to various locations; or

16 (2) the number of users in various locations.

17 SECTION 5. IC 36-9-23-26 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) After the  
19 introduction of the ordinance establishing fees under section 25 of this  
20 chapter, but before it is finally adopted, the municipal legislative body  
21 shall hold a public hearing at which users of the sewage works, owners  
22 of property served or to be served by the works, and other interested  
23 persons may be heard concerning the proposed fees. Notice of the  
24 hearing, setting forth the proposed schedule of fees, shall be:

25 (1) published in accordance with IC 5-3-1;

26 (2) mailed to owners of vacant or unimproved property if the  
27 ordinance includes a fee for sewer availability to vacant or  
28 unimproved property; and

29 (3) mailed to users of the sewage works located outside the  
30 municipality's corporate boundaries.

31 The notice may be mailed in any form so long as the notice of the  
32 hearing is conspicuous. The hearing may be adjourned from time to  
33 time.

34 (b) After the hearing, the municipal legislative body shall adopt the  
35 ordinance establishing the fees, either as originally introduced or as  
36 modified. A copy of the schedule of fees adopted shall be kept on file  
37 and available for public inspection in the offices of the board and the  
38 municipal clerk.

39 (c) **Subject to section 37 of this chapter**, the fees established for  
40 any class of users or property shall be extended to cover any additional  
41 property that is subsequently served and falls within the same class,  
42 without any hearing or notice.

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(d) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(e) Fees collected under this chapter are considered revenues of the sewage works.

SECTION 6. IC 36-9-23-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 36. **(a) Except as provided in subsections (b) and (c), a municipality may exercise powers granted by this chapter in areas within ten (10) miles outside its corporate boundaries. ~~However, this~~**

**(b) The mileage limitation in subsection (a) does not apply to the provision of sewage treatment service for an entity that is described in section 16(b)(2) of this chapter.**

**(c) In an area referred to in subsection (a), a municipality may not:**

- (1) impose fees under this chapter; or**
- (2) otherwise exercise powers granted by this chapter; to provide storm water management services to the area if the county provides storm water management services to the area under IC 8-1.5-5.**

SECTION 7. IC 36-9-23-37 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37. **(a) As used in this section:**

- (1) "service" means:**
  - (A) imposing fees; and**
  - (B) otherwise exercising powers; to provide storm water management services; and**
- (2) "storm water board" refers to a board defined in IC 8-1.5-5-2.**

**(b) This section applies only if actions of:**

- (1) a board under section 36 of this chapter; and**
- (2) a storm water board under IC 8-1.5-5;**

**are pending at the same time to service the same area outside a municipality's corporate boundaries.**

**(c) The board and the storm water board must negotiate the adoption by the board and the storm water board of a memorandum of understanding that permits only the board or only the storm water board to service the area referred to in subsection (b). Neither the board nor the storm water board may service the area before a memorandum of understanding is adopted under this subsection. The entity designated to service the area in the memorandum of understanding may finalize the entity's action referred to in subsection (b). The entity not**

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1 designated to service the area in the memorandum of  
2 understanding must terminate the entity's action referred to in  
3 subsection (b).

4 SECTION 8. An emergency is declared for this act.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 43, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 4, strike "and" and insert "**stating**".

Page 3, line 8, strike "readopt" and insert "**consider readoption of**".

Page 3, line 15, after "submit the" insert "**readoption**".

Page 3, line 18, after "(2)" insert "**for one (1) or more of the rules proposed to be readopted as part of the readoption rule described in subsection (a),**".

Page 3, between lines 18 and 19, begin a new paragraph and insert:

**"(d) If a person submits to the department or a board that has rulemaking authority under this title a written request stating a basis for the request during the first comment period that a particular rule that the department or board does not intend to readopt as part of the readoption rule described in subsection (a) be readopted, the department or board must:**

**(1) consider readoption of that rule separately from the readoption rule described in subsection (a); and**

**(2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule."**

Page 3, line 36, after "product" insert ".".

Page 3, line 36, delete "by".

Page 3, delete line 37.

Page 4, line 24, delete "by incineration." and insert "**only if the balance in the waste tire management fund is insufficient, as determined by the commissioner, to remove and dispose of one-half (1/2) of the total number of waste tires located at tire sites in Indiana that are not certified under IC 13-20-13-3.**".

and when so amended that said bill do pass.

(Reference is to SB 43 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

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## SENATE MOTION

Madam President: I move that Senate Bill 43 be amended to read as follows:

Page 4, delete lines 33 through 39, begin a new paragraph and insert:

**"(g) In providing grants and loans under subsection (a)(5), the department shall:**

**(1) consider electronic waste projects; and**

**(2) consider technologies for the conversion of waste tires into energy or another useful product only if the balance in the waste tire management fund is insufficient, as determined by the commissioner, to remove and dispose of one-half (1/2) of the total number of waste tires located at tire sites in Indiana that are not certified under IC 13-20-13-3."**

(Reference is to SB 43 as printed January 17, 2008.)

GARD

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 SENATE MOTION

Madam President: I move that Senator Riegsecker be added as second author of Engrossed Senate Bill 43.

GARD

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 COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 43, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 28 through 31.

Page 3, delete lines 31 through 42.

Page 4, delete lines 1 through 41.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 43 as reprinted January 25, 2008.)

DVORAK, Chair

Committee Vote: yeas 8, nays 0.

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